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Written statement* submitted by the Human Rights Advocates Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 August 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Report on the eighth session of the Expert Mechanism on the Rights of Indigenous Peoples

Human Rights Advocates welcomes the action undertaken by the Expert Mechanism on the Rights of Indigenous Peoples in discussing the relation Indigenous Peoples have to business enterprises. We urge the Human Rights Council to continue this discussion with the Expert Mechanism as well as the Working Group on Business and Human Rights in order to ensure that the framework of Free, Prior, and Informed Consent is effectively implemented and promoted in the context of the extractive industries as well as to encourage the need for a legally binding instrument on transnational corporations and business enterprises. This recommendation refers to the advance unedited version of the Draft Report of the Expert Mechanism on the Rights of Indigenous Peoples on its Eighth Session in Geneva on July 20-24, 2015.

Overview

Accounting for most of the world's cultural diversity with approximately 370 million Indigenous Peoples worldwide, Indigenous groups continue to be one of the most marginalized and vulnerable peoples in the world.[1] Indigenous Peoples' tradition, culture, religion, and identity is derived from their relationship with the earth. They look to it for their sustenance, spirituality, and cultural survival. This relationship has resulted in Indigenous groups being the most affected by the activities of transnational corporations and business enterprises, especially in the extractive and development industries.

Indigenous Peoples predominately reside in lands with an abundance of natural resources. Throughout the world, the majority of valuable natural resources such as timber, minerals, water and crude have been found within Indigenous territories.[2] Due to living on territories rich with natural resources, large-scale extractive activities and development projects seeking these resources have been the most detrimental to Indigenous Peoples as their loss of culture, livelihood, traditions and very survival is threatened by these practices.[3] Due to environmental damage and loss of traditional lands being a common effect of these types of activities, large-scale extractive and development activities by governments and corporations have presented a serious challenge for indigenous communities throughout the world.

Transnational corporations and business enterprises are instrumental in national and global economies. Not only are jobs, technology, and capital developed from their activities, corporate players can also exert a positive influence in fostering development through the extractive industry, especially for underdeveloped countries. Beyond economic development, corporations and business can contribute to the overall promotion of human rights. With more and more businesses and corporations seeking to leave a positive impact on human rights, these entities can play a vital role in ensuring that individual and collective rights of affected Indigenous communities are protected. State governments are equally important in the promotion and protection of Indigenous Peoples' rights as they set the standards and guidelines for corporations and business on how to conduct and implement projects within a state host's territories. Ensuring that the guidelines and standards set forth for those operating within the state hosts territories are monitored and followed.

The tension between corporations, businesses and Indigenous Peoples arises when extractive activities by corporate and government actors become detrimental to Indigenous communities. There is a recurring theme of the host state granting concessions to a corporation, for an extractive or development project, without the prior consultation and consent of the affected Indigenous community. This has led to an evident disconnect between the host state, the corporation, and the affected community. In turn this has resulted in the exploitation and destruction of the Indigenous community's territory and culture identity. What tends to be the driving force for these violations is the tension between seeking economic development and the protection of human rights.

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[1] *Environment*, U.N. PERMANENT FORUM ON INDIGENOUS ISSUES, *available at* http://undesadspd.org/IndigenousPeoples/ThematicIssues/Environment.aspx.

[2] U.N. Secretariat of the Permanent Forum on Indigenous Issues, Training Module on Indigenous Peoples' Issues: Facilitator's Handbook (Nov. 2010), *available at* http://www.un.org/esa/socdev/unpfii/documents/trainingmodule_en.pdf.

[3] LAURA WESTRA, ENVTL. JUSTICE & THE RIGHTS OF INDIGENOUS PEOPLES: INT'L & DOMESTIC LEGAL PERSPECTIVES 86 (2008).

Human Rights Advocates supports the current international framework on Indigenous Peoples' right to Free, Prior, Informed Consent, which applies to the extractive industries and development, as well as current international instruments on indigenous peoples' rights such as the International Labour Organization Convention No. 169[4] and the United Nations Declaration on the Rights of Indigenous Peoples.[5]

Further, Human Rights Advocates continues to support the current need for a legally binding international instrument on business and human rights and supports Ecuador's efforts in implementing Resolution A/HRC/RES/26/9 on the "Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights" adopted by the Human Rights Council on 25 June 25 2014. Human Rights Advocates further applauds the current efforts by various states and their commitment to creating National Action Plans to address this issue.

Recommendations

Human Rights Advocates urges the Human Rights Council and the Working Group to continue the discussion on the impact business enterprises have on rights of Indigenous Peoples. Human Rights Advocates further urges states to implement National Action Plans and support the current intergovernmental working group mandated to "elaborate an internationally legally binding instrument on transnational corporations and other business enterprises with respect to human rights." The need for all stakeholders -- indigenous groups, business and states -- to be involved in the discussion is crucial in order to ensure that Indigenous Peoples rights are protected.

Conclusion

The need for a legally binding international instrument is due to the failure that soft law such as the UN Guiding Principles on Business and Human Rights has had on protecting human rights, in particular providing remedies when there are violations. While the Guiding Principles are a positive step towards promoting human rights, a binding instrument on transnational corporations and business enterprises will empower developing countries to better protect their Indigenous communities. Further a binding international standard will be able to provide remedies for those affected communities that have been subjected to violations by corporations and business and also hold states, corporations, and businesses accountable for violations they have committed against Indigenous communities.

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[4] C169-Indigenous and Tribal Peoples Convention, 1989 [ILO 169], *Convention concerning Indigenous and Tribal Peoples in Independent Countries*, Sept. 5, 1991, Geneva, 76th ILC Sess.

[5] General Assembly, U.N. *Declaration on the Rights of Indigenous Peoples* [UNDRIP], 61st Sess., Oct. 2, 2007, U.N. Doc. A/RES/61/295.